

September 22, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Subscriber Acknowledgement Report (September 22, 2005)**
Vonage America Inc.; WC Docket No. 05-196

Dear Ms. Dortch:

Vonage America Inc. ("Vonage"), through its undersigned counsel and in response to the Commission's VoIP E911 Order ("Order") and the Public Notice issued by the Enforcement Bureau ("Bureau") on August 26, 2005 ("Public Notice"), submits this Subscriber Acknowledgement Report ("Report") to advise the Commission of the status of Vonage's efforts to comply with Commission Rule 9.5(e). Vonage has also previously filed Subscriber Acknowledgement Reports on August 10, 2005 in response to the Bureau's July 26, 2005 Public Notice ("August 10 Report") and, in compliance with the Public Notice, on September 1, 2005 ("September 1 Report").

Through its substantial efforts Vonage has successfully received affirmation from over 98% of its subscriber base. Notwithstanding this success, Vonage anticipates that it will not be able to achieve a one-hundred percent response rate by September 28, 2005.

While obtaining an affirmative acknowledgment from every subscriber would present challenges under normal circumstances, the events surrounding hurricane Katrina are, by all measures, exceptional. Because of the significance of these developments, their impact on customers and providers in the affected regions and beyond, Vonage respectfully submits that the public interest would be served if the Commission continued to forebear from enforcing any requirement that providers discontinue or otherwise limit the availability of communications services to those customers that have not yet provided their affirmative acknowledgment.

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Vonage is among those providers currently offering services to customers in regions affected by Katrina. New storms are now threatening new areas of the country. While Vonage will, as discussed below, be capable of implementing a “soft disconnect” procedure, Vonage submits that any suspension of service at this time could be highly detrimental since it could impair the ability of customers to call other “first responders” including friends, family, or federal or state emergency agencies. Given the recent intervening natural disaster, Vonage respectfully submits that the Commission should carefully consider extending its current policy regarding affirmative acknowledgments.¹

Because obtaining a one-hundred percent response rate is extraordinarily difficult², the Commission may also wish to consider limited conditions under which it would permit customers that have not yet acknowledged to continue to receive service. For example, the Commission may wish to evaluate allowing a provider to continue to offer service to a customer that has not yet acknowledged the 911 notification if: (1) the provider has demonstrated a plan of effective and repeated customer notifications as evidenced by it having achieved a substantially high acknowledgement rate; (2) the provider represents that it will continue seeking the acknowledgment of non-affirming customers, on a regular and repeated basis; (3) the provider has timely filed all three Subscriber Acknowledgement Reports with the FCC; and (4) the provider has implemented a system to obtain affirmative acknowledgement from all new subscribers through the subscription process.

Given that the last few percentages of customers are historically very difficult to reach, and in light of the effects of Katrina and the potential threats of new storms, Vonage respectfully submits that policies such as those discussed above would be in the interest of consumers and public safety.

As requested in the Public Notice, Vonage responds to the following questions set out in the Public Notice:

¹ Vonage notes that on August 16th the Florida Public Service Commission cited the threat of hurricanes when it urged the Commission to stay the discontinuance provision. The Florida Commission specifically noted that discontinuing service may lead to worse disruption and potential tragedies. It also noted that hurricane season extends through November 30th. See *Ex Parte Letter from Chairman Braulio L. Baez, Florida Public Service Commission*, Docket Nos. 04-36 and 05-196 (Filed Aug. 16, 2005).

² Similar consumer notice campaigns have also failed to obtain a 100% response rate. For example, despite efforts spanning more than a year, Black & Decker’s recall of 25,000 Spacemaker Plus coffeemakers achieved a return rate of only 92 percent of its 70,000 customers. N. Craig Smith, Robert J Thomas, & John A. Quelch, *A Strategic Approach to Managing Product Recalls*, HARVARD BUSINESS REVIEW, Sept.-Oct. 1996, at 102-12. A 2002 study of child safety seats by the National Highway Traffic Safety Administration found that even among those who deemed the safety seat registration “extremely important,” more than 10% failed to return their registration card. See *Evaluation of Child Safety Seat Registration, NHTSA Technical Report (2002)*, available at <http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.8be34eba2a5557dd304a4c4446108a0c/>. As a result of these and similar experiences, other agencies have recognized the impossibility of obtaining 100% response, and have designed customer notification rules around more reasonable expectations. See, e.g., *In re Bayley Suit, Inc.*, 102 FTC 1285 (1983); and *In re Fedders Corp.*, 93 F.T.C. 949 (1979).

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- 1) **A detailed explanation regarding current compliance with the notice and warning sticker requirements *if* the provider did not notify and issue warning stickers or labels to 100% of its subscribers by the July 29, 2005 deadline. Providers expected to update this information include those that were in the process of providing notice and/or stickers to their subscribers, but had not completed the process by July 29, 2005.**

Not applicable. Vonage sent advisories and warning labels to all of its then-existing customers by July 29, 2005.

- 2) **A quantification of the percentage of the provider's subscribers that have submitted affirmative acknowledgements as of the date of the September 1 and September 22 reports, and an estimation of the percentage of subscribers from whom the provider does not expect to receive an acknowledgement by September 28, 2005.**

As of September 22, 2005, Vonage has obtained affirmative acknowledgement from more than 98% of its subscriber base. However, given the size of Vonage's subscriber base, it still must obtain acknowledgements from thousands of customers. Vonage cannot predict with precision what its final response rate will be by September 28, 2005.

- 3) **A detailed description of any and all actions the provider plans to take towards any of its subscribers that do not affirmatively acknowledge having received and understood the advisory.**

The Company will continue contacting non-responsive customers to obtain affirmative acknowledgement through various means, including emails, U.S. postal mail, and automated calls. For those customers who have not yet acknowledged Vonage's advisory, Vonage is currently investigating whether such customers are U.S. VoIP subscribers covered by the Order or international VoIP subscribers not covered by the Order. Although Vonage believes that it can achieve a slightly higher rate of responsiveness by September 28, 2005, the Company anticipates that despite its best efforts, Vonage may not be able to obtain affirmative acknowledgement from a small minority of its covered subscribers by that deadline. Vonage is prepared to restrict the ability of those covered subscribers who still have not responded by September 28, 2005 to use their VoIP service. Although, as mentioned above, Vonage believes that discontinuance of customer service would be contrary to the public interest, Vonage is in the processes of modifying its systems to ensure that (1) appropriate calling restrictions can be imposed by September 28, 2005, (2) subscribers who have had their service restricted can promptly submit an affirmative acknowledgment through the use of one of several systems, including an Interactive Voice Response ("IVR"), and (3) the VoIP calling restrictions can be lifted as soon as possible upon receipt of affirmative acknowledgment.

- 4) **A detailed description of any and all plans to use a "soft" or "warm" disconnect (or similar) procedure for subscribers that fail to provide an affirmative acknowledgment by September 28, 2005.**

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Vonage is in the process of implementing a "soft" disconnect capability that can be used to restrict the ability of its subscribers to make outbound calls using Vonage's service until the subscriber has completed the affirmative acknowledgement process. If deemed permissible, this capability could still allow the Vonage subscriber to place 911 calls and to receive inbound calls. Provided that the FCC clarifies that this "soft" disconnect process is permissible, and that no further Public Notices are issued, Vonage will implement this soft disconnect policy for customers that have not affirmatively acknowledged Vonage's E911 disclosures by September 28, 2005. A 911 call placed by a customer in soft disconnect status will be routed in the same manner as 911 calls placed by customers who have acknowledged the advisory and whose accounts are active. Once a subscriber has submitted an affirmative acknowledgment, Vonage will promptly restore that customer's service.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W.B. Wilhelm, Jr.", with a stylized flourish at the end.

William B. Wilhelm, Jr.

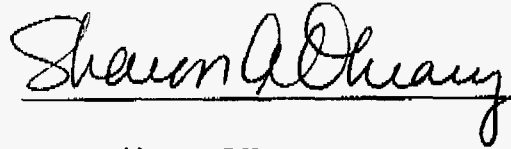
Tamar E. Finn

Counsel for Vonage America, Inc.

cc: Byron McCoy (FCC)
Kathy Berthot (FCC)
Janice Myles (FCC)
Best Copy and Printing, Inc.

VERIFICATION

I, Sharon O'Leary, state that I am Chief Legal Officer of Vonage Holdings Corp., the ultimate holding company of Vonage America Inc.; that I am authorized to submit this report on behalf of Vonage America Inc.; that the foregoing filing was prepared under my direction and supervision; and I declare under penalty of perjury that this report is true and correct to the best of my knowledge, information, and belief.

A handwritten signature in black ink, reading "Sharon O'Leary", written over a horizontal line.

Name: Sharon O'Leary
Title: Chief Legal Officer

Vonage Holdings Corp.